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July 9, 1991

RQ-166

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Opinion Committee

Attorney General of Texas
P.O. Box 12548, Capitol Station
Austin, TX 78711-2548

RE: Requested Attorney General's Opinion Concerning Port of Bay City Authority of Matagorda County's Ability To Participate With Matagorda County In The Establishment, Construction, Dredging, And Opening Of A Public Park And Fish Pass From East Matagorda Bay To The Colorado River

Dear Attorney General Morales:

The Port of Bay City Authority of Matagorda County, Texas, has contacted my office to request an opinion from the Attorney General of the State of Texas concerning the following questions, to-wit:

1. Whether or not the Port of Bay City Authority of Matagorda County, Texas, a navigation district established on or about February 22, 1960, pursuant to Article XVI, Section 59 of the *Texas Constitution*, has the authority and power to participate with Matagorda County by the using of ad valorem tax revenues of the Port of Bay City Authority in the establishment, dredging, and opening of a fish pass from East Matagorda Bay to the Colorado River?
2. Whether or not the Port of Bay City Authority of Matagorda County, Texas, a navigation district established on or about February 22, 1960, pursuant to Article XVI, Section 59 of the *Texas Constitution*, has the authority and power to participate with Matagorda County by the using of ad valorem tax revenues of the Port of Bay City Authority in the building of a public park and boat ramp adjacent to the proposed fish pass from East Matagorda Bay to the Colorado River?

Attorney General Of Texas

July 9, 1991

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— Page 2

3. If the Port of Bay City Authority of Matagorda County, Texas, can legally enter into a cost-share agreement with Matagorda County concerning the construction of a public park and fish pass from East Matagorda Bay to the Colorado River, is there any limitation on the use of ad valorem tax revenues received by the Port of Bay City Authority of Matagorda County for the construction and dredging of the fish pass and the building of the public park?

Section 62.101 of the *Texas Water Code* provides that a navigation district may be created under Subchapter D to provide in or adjacent to its boundaries for:

1. the improvement, preservation, and conservation of inland and coastal waters for navigation;
2. the control and distribution of storm water and floodwater of rivers and streams in aid of navigation; and
3. any other purposes necessary or incidental to the navigation of inland and coastal water or in aid of these purposes, as stated in Article XVI, Section 59, of the *Texas Constitution*.

The above provisions contained in Section 62.101 do not appear to authorize an Article XVI, Section 59 navigation district to engage in the establishment, construction, dredging, and opening of a fish pass, which is not directly related to navigation or the building of a public park and boat ramp.

One side benefit of the East Bay Cut will be to allow storm water run off which accumulates in East Bay to be passed out the mouth of the Colorado River which happens now only indirectly through the Intercoastal Water Way. Although Section 62.101 does provide that a district may be created for the purpose of controlling the distribution of storm waters and flood waters of rivers and streams, such appears to have to be directly related to aid of navigation.

I am attaching, herewith, a photocopy of a September 2, 1990 article which appears in *The Daily Tribune*, the Bay City daily newspaper.

Attorney General Of Texas

July 9, 1991

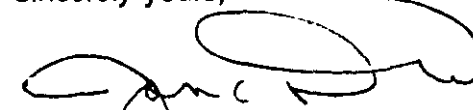
Re: Requested Attorney General's Opinion Concerning Port of Bay City Authority of Matagorda County's Ability To Participate With Matagorda County In The Establishment, Construction, Dredging, And Opening Of A Public Park And Fish Pass From East Matagorda Bay To The Colorado River

— Page 3

If you have any additional questions or need any additional information, please do not hesitate to contact my office or the office of B. Allen Cumbie, the Port of Bay City Authority's attorney. Mr. Cumbie's office number of (409)245-1623 and is address is 1820 Seventh Street, Bay City, Texas 77414.

We would appreciate receiving this opinion as quickly as possible as the County has now applied for a grant and the permitting procedures have almost been completed.

Sincerely yours,



John C. Dickerson, III
County Attorney

BAC:sas
Enclosure

cc: Mr. B. Allen Cumbie
Mr. Billy W.J. Denn, Chairman
Port of Bay City Authority
Mr. Lacey Lowry
Mr. George Deshotels